

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 103 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

NITIN K VALA

Versus

ARUNABEN NITINBHAI VALA

-----

Appearance:

MR PJ KANABAR for Petitioner

MR YN RAVANI for Respondent No. 1

-----

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 07/07/97

ORAL JUDGEMENT

Heard Mr. Kanabar for the appellant-husband and Mr. Ravani for the respondent-wife. The parties were married on 9th December, 1991 at Rajkot. They resided together for about eight months and it is the case of the respondent-wife that from October, 1992 onwards, she has been deserted. It is her case that she has been illtreated and since then, she has been required to stay with her parents in Rajkot which is the averments in Para

10 of the Special Civil Suit No.96 of 1994 which is filed and pending in the Court of Civil Judge (Senior Division) at Rajkot. She has filed this suit under Sec.18 of the Hindu Adoption and Maintenance Act for claiming maintenance. The appellant-husband herein filed reply, but it appears that nobody remained present on his behalf, when the interim application was considered. The learned Judge has awarded Rs.3,000/- per month on that application. Being aggrieved by that order dt. 24th November, 1996, this appeal has been filed by the appellant-husband.

2. Mr.Kanabar Learned Advocate appearing for the appellant has canvassed particularly two submissions. Firstly, he has said that under Sec.18 of the Hindu Adoption and Maintenance Act, it was necessary for the respondent to make out a case for maintenance. Now it has clearly come on record that respondent-wife has alleged that she was being illtreated and she was being beaten. This would certainly amount to cruelty so as to cause apprehension in her mind that it will be harmful and injurious for her to live with her husband. The respondent therein has denied this allegation. It has, therefore, to be decided on evidence. However there is prima facie material to justify the initiation of the proceeding. Second submission of the appellant is that the court at Rajkot has no jurisdiction. It is a suit for maintenance i.e. the suit for money and under Sec.20(c) of the Code of Civil Procedure, where a part of cause of action has arisen the suit can be filed. Respondent's allegation is that she was deserted at Rajkot and she was required to stay at her parental house. Naturally, she was bound to file a suit there. Under Sec.18 (1) of the Act, it is the responsibility of the husband to maintain his wife. The appellant has not filed any proceeding for divorce and the marriage is still subsisting. The suit was, therefore, fully maintainable.

3. The respondent wife has stated in the plaint that the appellant is working in Air India as an Accounts Manager and is posted in a gulf country. He is drawing a salary of Rs.60,000/- per month, and has no dependants as such. she was entitled to get appropriate maintenance from him. Sec.106 of the Evidence Act requires the party to come with clean hands with respect to whatever information or documents that is there in his/her knowledge and possession. Even today, on specific inquiry from the court, it has not been informed as to what is his monthly salary. So the statement made in the plaint by wife was not controverted by the husband. When

the cost of living is going up, she was entitled to be maintained as per her status as the wife of such a highly salaried person. The learned Judge has rightly awarded Rs.3,000/-per month as interim maintenance which does not call for interference.

4. Mr. Kanabar relied in his support upon the judgment in the case of Arun Kumar Bedi Vs. Smt.Anjana Bedi, reported in AIR 1984 Calcutta Page 49, where considering the facts of the case, the Calcutta High Court has held that it had no jurisdiction inasmuch as no part of cause of action for separate maintenance arose at Calcutta. In that case, the parties were married in Delhi and the wife had been deserted in U.K. As stated above, the facts of that case are quite contrary to the facts of the present case. Mr. Kanabar relied upon the judgment in the case of Borard of Trustees for the Port of Calcutta and Another Vs. Bombay Flour Mills Pvt. Ltd. and Another, reported in 1994 AIR SCW 4855 to contend that AN order without jurisdiction is void. There cannot be any dispute with respect to this proposition, but in the instant case, the order is not one which can be said to be without jurisdiction. Mr. Kanabar lastly relied upon the judgment in the case of Neeta Deelipkumar Suchak Vs. Deelipkumar Mohanlal Suchak and others reported in AIR 1983 Bombay P 235, wherein again neither the act of desertion nor any act of cruelty had taken place within the jurisdiction of Bombay High Court and so proceedings were held to be not maintainable. In the facts of the present case, in my view, the responsibility to maintain the wife was very much established, when she was deserted at Rajkot and the Rajkot Court did have jurisdiction.

5. For the aforesaid reasons, the appeal is hereby dismissed with costs, quantified at Rs.3,000/-for this Appeal. Mr. Kanabar requests for stay of this order and continuation of interim relief granted earlier. This request is rejected.

-----